SUPREME COURT, U. S.
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IN THE

# Supreme Court of the United States

October Term, 1966.

No. 1033.

AARON DANIEL,

*Petitioner,*

*v.*

SKIBS A/S HILDA KNUDSEN and CHRISTIAN HAALAND and BOISE GRIFFIN STEAMSHIP COMPANY, INC.,

*Respondents.*

# BRIEF IN OPPOSITION.

T. E. Byrne, Jr.,
*Counsel for Respondents.*

Timothy J. Mahoney,
E. Alfred Smith,
Joseph A. Barone,
Krusen Evans and Byrne,
21 South Twelfth Street,
Philadelphia, Penna.,
*Of Counsel.*

International, 711 So. 20th St., Phila., Pa. 19146—Tel. SA 7-2711 Area Code 215

## INDEX.


| | Page |
|---|---|
| COUNTERSTATEMENT OF QUESTION INVOLVED | 1 |
| COUNTERSTATEMENT OF THE CASE | 2 |
| REASONS WHY THE WRIT SHOULD NOT BE GRANTED | 4 |
| CONCLUSION | 9 |
| APPENDIX | 11 |


## TABLE OF CASES CITED.


| | Page |
|---|---|
| Calbeck v. Travelers Ins. Co., 370 U. S. 114 | 6 |
| Gutierrez v. Waterman S. S. Corp., 373 U. S. 206, 83 S. Ct. 1185 (1963), reh. den. 374 U. S. 858, 83 S. Ct. 1963 (1963) | 4 |
| Mitchell v. Trawler Racer, Inc., 362 U. S. 539 | 7, 8 |
| Pope & Talbot, Inc. v. Cordray, 258 F. 2d 214 | 6 |
| Reed v. The Yaka, 373 U. S. 410, 83 S. Ct. 1349 (1963), reh. den. 375 U. S. 872, 84 S. Ct. 27 (1963) | 4 |
| Seas Shipping Co. v. Sieracki, 328 U. S. 85, 66 S. Ct. 872 (1946) | 4 |
| Italia Societa v. Oregon Stevedoring Co., 376 U. S. 315 | 8 |
| Senko v. LaCrosse Dredging Corp., 352 U. S. 370 | 5 |
| Texas Co. v. G. Ianfala, 350 U. S. 879 | 5 |

## COUNTERSTATEMENT OF QUESTION INVOLVED.

After cargo which has been transported by water has been unloaded from the ship, transported on rail cars, unloaded from the rail cars onto the floor of the consignee's warehouse and is thereafter being stacked within the warehouse, is an individual injured by reason of the breaking of a rope used in the stacking operation entitled to recover in a suit against the shipowner based solely upon a claim of a breach of the shipowner's warranty of seaworthiness?

## COUNTERSTATEMENT OF THE CASE.

We will refer to the parties herein as the shipowner (respondent), plaintiff (petitioner), stevedore (Murphy, Cook & Co.) and consignee (McAndrews & Forbes).

Shipowner's vessel transported a cargo of baled licorice root to consignee's wharf in Camden, N. J. Stevedore was engaged to unload the cargo under a procedure as follows:

Bales removed from the ship's hold were placed upon a landing stage on the dock. From there, the bales were manually tumbled onto pallets on flat rail cars upon the pier. Up to this point the work was performed by stevedore's employees. Ultimate payment for this portion of the work was borne by shipowner in the form of a per ton allowance to the consignee against payable freight.

The rail cars and engine to be mentioned hereinafter were owned by consignee and operated by its employees. When a string of rail cars had been loaded, consignee's employees attached an engine to the cars and hauled them from the pier to a warehouse on shore also owned by the consignee. Within the warehouse, men, including plaintiff, were employed whose job it was to stack the bales of licorice root within the warehouse. These men were also in the temporary employ of the stevedore but under a completely different arrangment for payment. Payment of these men was to be reimbursed to stevedore by consignee. The work of the men in the warehouse was confined entirely to that locale. None of them, including the plaintiff, had any part in the work being performed either on the ship or immediately alongside the ship upon the pier. They worked at the receiving end of the rail track only.

After the rail cars had been pulled from the pier and brought to the warehouse, the bales were unloaded from the flat cars at a point outside the warehouse and brought into the warehouse by fork lift trucks. From the floor of the warehouse they were to be stacked. The procedure was

that a consignee-owned rope was attached to a roof beam within the warehouse. That rope was attached to a block. Fellow employees of plaintiff, all employed by the stevedore on this occasion but pursuant to an arrangement with the consignee for reimbursement of the costs, worked within the warehouse. With the aid of a motor and an "ice-tong" like device, the bales were raised from the floor of the warehouse and stacked.

Plaintiff was injured when the consignee's "hanger" rope attaching the block to a roof beam parted during the stacking operation. In a different action plaintiff sued the consignee who owned the warehouse and the rope involved. In this action he sued only the shipowner. His suit against the shipowner came to trial first. The action against the consignee is still pending and undetermined.

At the trial of plaintiff's suit against shipowner, the defendant meticulously followed the procedures outlined by the Federal Rules. It moved for a directed verdict at the close of the plaintiff's case and at the close of all the evidence. The trial judge reserved ruling and submitted the case to the jury, which returned a verdict in the sum of $10,000 in favor of the plaintiff.

Thereafter, District Judge Joseph Lord, III filed an opinion which, for convenience, is printed as an appendix to this Brief. The District Court granted defendant's rule 50b Motion and entered judgment in favor of the defendant. The District Court's opinion is reported 253 Fed. Sup. 758 and appears as an appendix to this Brief, page 11.

## REASONS WHY THE WRIT SHOULD NOT BE GRANTED.

**I.** Both the District Court and the Court of Appeals have held that the plaintiff is not within the class of persons who may recover in a suit against the shipowner based solely upon a breach of the warranty of seaworthiness.

We will not affect learning and repeat here the reasons which are so much more cogently expressed by District Judge Lord in his opinion. He there points out the distinction between shipowner's work and consignee's work. The Court of Appeals not only affirmed District Judge Lord's opinion per curiam, but went on to state additional reasons for reaching the same result. Thus plaintiff's case has been carefully considered by two lower Courts, both of which arrived at the same conclusion.

Plaintiff is so far removed from the group to which any Court has extended the not-fault liability of a shipowner that any other holding by the Courts below would have clashed with the decisions and the rationale of the decisions of this Court. *Seas Shipping Co. v. Sieracki*, 328 U. S. 85, 66 S. Ct. 872 (1946); *Gutierrez v. Waterman S. S. Corp.*, 373 U. S. 206, 83 S. Ct. 1185 (1963), reh. den. 374 U. S. 858, 83 S. Ct. 1963 (1963); *Reed v. The Yaka*, 373 U. S. 410, 83 S. Ct. 1349 (1963), reh. den. 375 U. S. 872, 84 S. Ct. 27 (1963).

**II.** In seeking to find something—anything—to make it appear that the present decision is in conflict with some other decision, petitioner has served a potpourri of confusion. Cases involving longshoremen's suits for personal injuries, indemnity actions by shipowner against stevedore and seamen's actions against their employers under the Jones Act have been mixed indiscriminately. They have been stewed without regard to the fact that this Court has made clear the different conceptual approaches which are applicable to each distinct type of action.

While petitioner first asserts "usurpation of trial by jury", it is stated only as a question presented and not supported by reasons or argument. Such brief reference as petitioner makes to the point is at page 8 of the petition, but it hardly supports his reasons for granting the writ. While petitioner claims (petition, page 8) that he should have a jury trial upon the question of his participation in the unloading process because he was "a longshoreman doing crewman's work" and cites *Senko* (352 U. S. 373) and *Texas Co.*, (350 U. S. 879) he does so on a bootstrap premise. He assumes that which both Courts below have decided against him, namely that he was "a longshoreman doing crewman's work".

We call this Court's specific attention to the fact that petitioner cites nothing in the record, for there is nothing, to support the statement that he was "a longshoreman doing crewman's work". As both Courts below have pointed out, he was a warehouseman doing a warehouseman's work in the warehouse of the consignee against whom, if anyone, he has a cause of action. *Senko* and *Texas Co.* both involved situations where there was an evidentiary basis for a jury finding that the individual there involved was performing the work of a member of the ship's crew. Here, petitioner presented no evidence to sustain the proposition that he was a longshoreman removing cargo from a ship or even handling it immediately alongside the ship. To put it in a different context, he was at the other end of the pipeline.

Thus petitioner begs the question when he assumes himself to have been "a longshoreman doing crewman's work".

The District Court's opinion is a very careful and impartial analysis of all of the evidence. The most that evidence would support was that petitioner was doing the consignee's work, not shipowner's work. He was working at the discharging end of a process of transportation on land. The rope which broke and caused the injury was the

property of the consignee. There had been an end to the process of transportation by water.

The decisions below are not in conflict with any decision of this Court. As a matter of fact they are clearly based upon an analysis of the decisions and the rationale of the decisions of this Court. The actionable facts here occurred well beyond the demarcation line which this Court so recently and carefully drew in *Calbeck v. Travelers Ins. Co.*, 370 U. S. 114.

**III.** In petitioner's search for decisions which, he argues, may be in conflict with the decisions below, he cites to this Court *Pope & Talbot, Inc. v. Cordray*, 258 F. 2d 214, and relies strongly upon it (Petition, page 8).

Petitioner fails to recognize the basic distinction between the case at Bar and the decision of the Court of Appeals for the Ninth Circuit in *Cordray*. Cordray was injured in an accident on board the ship (258 F. 2d 214 at 217, second column). Even if that had not been the essential distinction between that case and this, Cordray's employment was at the filling end of the pipeline, so to speak, whereas petitioner here is at the spilling end of the pipeline and his occupation was even one step removed from the actual discharge at the far end of the pipeline or rail transit of the cargo in question. There is indeed a clear distinction between the breaking of an appliance which is a part of the ship's equipment and the breaking of an appliance which is a part of the consignee's warehouse equipment at the far end of the rail line used to transport the cargo from shipside to consignee's warehouse and stack it therein.

**IV.** Petitioner's visceral approach to the problem appears, in perspective, to stem from the fact that he was in the temporary employ of a company which has designated itself as a stevedoring company. His is a logic of labels, not of fact. His argument seems to be that everyone in the temporary employ of a firm designating itself as a

stevedoring company is entitled to recover in a warranty of seaworthiness action against the shipowner. If what petitioner calls the "true test" (Petition, page 9, last paragraph) should be that the activity of the person claiming recovery "was reasonably essential" to unloading the ship, it would lead to completely illogical results. The stevedore's employee who had gone to the Custom House to file a Customs Declaration and was injured when the elevator in the Customs House fell would be entitled to recover in a suit against the shipowner because, in one sense of the word, his activity was "essential in the unloading process" and the use of the elevator "foreseeable" (Petition, pages 9-10). Following petitioner's logic, failure of the elevator would "expose to liability the shipowner" because he had a "non-delegable duty to provide proper tools" for the stevedore's employee to get from the first to the tenth floor of the Custom House so that the Customs Declaration could be filed in the proper office.

**V.** We are completely unable to understand the logic of petitioner's third reason commencing on line three of page 9 of the Petition.

The lower Court did not "find" that the rope which broke was owned by the consignee of the cargo and used in its warehouse. That was the Petitioner's evidence and was uncontradicted. Petitioner is correct when it says that the Courts below, considering this uncontradicted evidence, held that the rope attaching the block to the roof beam in the consignee's warehouse "was not part of the ship's tackle or appurtenances which the vessel's owners were required to keep in good workable condition" (Petition, page 9).

Petitioner then goes on to argue that this decision by the Court below sounds "in negligence based upon right and duty of inspecting the rope in question". He cites *Mitchell v. Trawler Racer, Inc.*, 362 U. S. 539. Petitioner completely misconceives both the holding of the Courts

below and this Court's decision in *Mitchell*. The Courts below in the case at Bar were not discussing anything like the situation which was before this Court in *Mitchell*. They were not talking about "common law negligence concepts". They were speaking of the scope of the shipowner's warranty and the class to whom it extends.

Petitioner quotes (Petition, page 9) some language from this Court's decision in *Italia Societa*, 376 U. S. 315, but he completely overlooks the fact that there, as the quotation demonstrates, this Court was speaking of "the owner" meaning the shipowner. In the case at Bar the shipowner did not engage others to perform the work. The consignee did that. He might have arranged with the stevedore to provide this warehouse labor or he might have arranged with some other contractor to provide this warehouse labor or he might have hired the labor on his own payroll as he had done in the past (R. 26b). Nothing about the agreement under which petitioner was working in the consignee's warehouse had anything to do with shipowner's business. The decisions of the Courts below clearly spell out that whenever this Court has spoken of "the owner" in this type maritime case, it is speaking of the shipowner, not of the owner of a shoreside warehouse.

## CONCLUSION.

There is nothing about the decisions below which merits hearing and decision by this Court. The principles of this Court's decision are clear and this case is not encompassed within them. There is no conflict. The Petition should be denied.

Respectfully submitted,

T. E. Byrne, Jr.,
*Counsel for Respondents.*

Timothy J. Mahoney,
E. Alfred Smith,
Joseph A. Barone,
Krusen Evans and Byrne,
21 South Twelfth Street,
Philadelphia, Penna.,
*Of Counsel.*